

JUDICIAL PRECEDENTS – THEIR BINDING FORCE AND THEIR REVIEW

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1) Doctrine of *Stare decisis*

“*Stare decisis*” is a latin phrase which means “to stand by decided cases” or “to uphold precedents”. Doctrine of *Stare decisis* is a general maxim which states that when a point of law has been decided, it takes the form of a precedent which is to be followed subsequently and should not normally be departed from. The hon'ble Madras High Court in *Peirce Leslie & Co. v. CIT* [1995] 216 ITR 176 observed that the doctrine of *stare decisis* is one of the policy grounded on the theory that security and certainty require that accepted and established legal principal, under which rights may accrue, be recognised and followed, though later found to be not legally sound, but whether a previous holding of the court shall be adhered to, or modified, or overruled is within the Court's discretion under the circumstances of case before it.

The above observation of the Madras High Court underscores two important aspects of the doctrine of *stare decisis*. One, it imparts security and certainty in the legal system of the country in the sense that it becomes more stable and predictable. Non observance of this doctrine would, in fact, lead to chaos. Everybody would be than seen interpreting the law according to his whims and fancies. Lawyers would be a confused lot not knowing how to advise their clients. Courts would be in quandary while delivering judgements and the general public would be in a dilemma as to what is the correct position of law- whether to obey or not to obey it and ultimately the whole judiciary would lose its credibility. The other aspect that is highlighted is the limitation of this doctrine. Hon'ble High Court states that a judicial precedent may in certain circumstances, more particularly when it is not based on legally sound principals, be departed from at the discretion of the court.

2) Decisions of the Supreme Court

By virtue of Article 141 of the Constitution of India, the judgements pronounced by the hon'ble Supreme Court have the force of law and are binding on all courts in India. However, the Supreme Court itself is free to review its earlier decision and depart from it if the situation so warrants.

3) High Court decisions- whether binding in nature and binding on whom

Though there is no express provision in the Constitution like article 141, in respect of the High Courts, the Tribunals within the jurisdiction of a High Court are bound to follow its judgements as the High Court has the power of superintendence over them under article 227 of the Constitution.

The hon'ble Supreme Court in *East India Commercial Co. Ltd. v. Collector of Customs* AIR 1962 SC 1893 observes -

" We therefore, hold that the law declared by the highest court in the state is binding on authorities or Tribunals under its superintendence and they cannot ignore it."

The Apex Court reiterated the aforesaid position once again in ***Baradakanta Mishra v. Bhimsen Dixit AIR 1972 SC 2466*** where it stated that it would be anomalous to suggest that a Tribunal over which a High Court has superintendence can ignore the law declared by it and if a Tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision as in respect of Supreme Court, making the law declared by the High Court binding on subordinate Courts. The court further observed that it is implicit in the power of supervision conferred on a superior Tribunal that all the Tribunals subject to its supervision should conform to the law laid down by it. If the Tribunals defy their jurisdictional High Court, there would be confusion in the administration of law and respect for law would irretrievably suffer.

Emphasising the need of following the judgements of the High Courts by the Assessing Officers, the Allahabad High Court in ***K. N. Agarwal v. CIT [1991] 189 ITR 769*** observes-

"Indeed, the orders of the Tribunal and the High Court are binding upon the Assessing officer and since he acts in a quasi judicial capacity, the discipline of such functioning demands that he should follow the decision of the Tribunal or the High Court, as the case may be. He cannot ignore merely on the ground that the Tribunal's order is the subject matter of revision in the High Court or the High Court's decision is under appeal before the Supreme Court. Permitting him to take such a view would introduce judicial indiscipline, which is not called for even in such cases. It would lead to a chaotic situation".

The hon'ble A.P. High Court went a step further in ***State of A.P. v. CTO (1988) 169 ITR 564***, where it pronounced that it is not permissible for the authorities and the Tribunals to ignore the decisions of the High Court or to refuse to follow the decisions of the High Court on the pretext that an appeal is pending in the Supreme Court or that steps are being taken to file an appeal. The court then made the following important and bold observations-

" If any authority or the Tribunal refuses to follow any decision of the High Court on the above grounds, it would be clearly guilty of committing contempt of the High Court and is liable to be proceeded against."

4)Position in regard to different benches of the same High court

The position is as follows-

-A single Judge or a Division Bench order of a High Court is binding on the single judge of the same High Court.

-It is obligatory on the part of a Division Bench to follow the decision of another Division Bench of equal strength or a full Bench of the same High Court.

-Where a Single Judge does not subscribe to the views expressed in a Single Judge's order or Division Bench's order of the same HC, he should place the papers before the Chief Justice to enable him to constitute a larger Bench to examine the question.

-Similarly where a Division bench differs from another Division Bench of the same High Court, it should refer the case to a larger Bench.

The above summarised position has been culled out from *CIT v. Thana Electricity supply Ltd. [1994] 206 ITR 727 (Bom.)*

Other High Courts and the Supreme Court have expressed similar views.

-Law of precedents is that a decision of the Division Bench given in an earlier case is binding on a subsequent Bench.

CIT v. Hari Nath & Co. (1987) 168 ITR 440 (All.)

-Judicial propriety requires single Judge to follow and apply earlier Division bench Judgement of same court which is very much binding on him sitting as a single Judge of the same High Court

Super spinning Mills Ltd. v. CIT (1993) 199 ITR 832 (Mad.)

-So long as the Full Bench Judgement stands, the dicta laid down therein are binding on all courts including single judges and Division benches of that High Court

Koduru Venkata Reddy v. LAO [1988] 170 ITR 15 (AP)

-Judicial decorum and legal propriety demand that where a learned single judge or a Division Bench does not agree with the decision of the Bench of Co-ordinate jurisdiction, the matter shall be referred to a larger Bench. It is subversion of judicial process not to follow this procedure.

Sundarjas Kanyalal Bhatija v. Collector [1990] 183 ITR 130 (SC)

5)Whether binding force of decision of a High Court extends beyond its territorial jurisdiction

The Bombay High Court in *CIT v. Thana Electricity Supply Ltd. (Supra)* had the occasion to examine this question, more particularly in the light of confusion created by the judgement rendered by the same court in *CIT v. Jayantilal Ramanlal & Co.[1982] 137 ITR 257* wherein it was observed-

"We are aware that the practice is not uniform among the High Courts, but nevertheless we are of the opinion that it is a desirable one. Unless the judgement of another High Court dealing with an identical or comparable provision can be regarded as *per incuriam* it should be ordinarily followed". (*Note:*A decision of a court is *per incuriam* when it is given without its attention having been drawn to the relevant authorities or statutes).

The Court held that the observations in Jayantilal's case leave no scope for doubt that the court merely observed what according to it is desirable and did not intend to lay down any principle of law making the decisions of other High Courts binding precedents for another Court. Any other construction of these observations in the above cases will lead to anomalous situation as it will have the effect of giving the decisions of any other High Court the status of law binding on all Courts or Tribunals throughout the country- a status which the Constitution by virtue of article 141, has conferred only on the judgements of the Supreme Court. If for the sake of the uniformity, the decisions of any High Court are to be accepted as a binding precedent by all courts including other High Courts and Tribunals in the country, the very distinction between the precedent value of Supreme Court decisions and the High Court decisions will be obliterated. Such a situation is neither contemplated by the constitution nor it is in consonance with the principles laid down by the Supreme Court and the doctrine of *stare decisis*.

In *Patil Vijay kumar v. Union of India* [1985] 151 ITR 48, the Karnataka High Court made the following observations-

" We wish to add that although a decision of another High Court is not binding on this court, we see no reason for not accepting with respectful caution, any help they can give in the elucidation of question which arise before this court."

Thus it is now a well settled position that decision rendered by a High Court is not binding on other High Courts or the Tribunals or authorities beyond its territorial jurisdiction. At best, its decision can have persuasive value.

Even the fact that there is only one decision of a High Court available on the issue in question or that a number of other High Courts have taken identical views in that regard, this settled position does not alter.

However, the courts have also held that normally, more so in regard to Income -tax Act, which is a piece of all India legislation, if any High Court has construed any section or rule, that interpretation should be followed by the other High Court unless there are compelling reasons to depart from that view

[Please see *Peirce Leslie & Co. v. CIT* (Supra);

CIT v. Deepak family Trust No. 1(1994) 72 Taxman 406 (Guj.);

CIT v. Alcock Ashdown & Co. Ltd. (1979) 119 ITR 164 (Bom);

Sarupchand Hukamchand, In re [1945] 13 ITR 245 (Bom.)]

6)Conflicting decisions of the same court

Where there are conflicting decisions of courts of co-ordinate jurisdiction (read same rank), the later decision is to be preferred if reached after full consideration of the earlier decisions.[See *CIT v. Thana Electricity Supply Ltd.* (Supra)]

7)When a precedent ceases to be binding

The A.P.High Court in *CIT v. B.R. Constructions* [1993] 202 ITR 222 states that a precedent ceases to have a binding force in the following situations-

- (i) if it is reversed or overruled by a higher court;
- (ii) when it is affirmed or reversed on a different ground;
- (iii) when it is inconsistent with the earlier decisions of the same rank;
- (iv) when it is *sub silentio* (Latin term for "Under Silence". Here it means non-speaking judgement).
- (v) when it is rendered *per incuriam*.

8)Obiter dicta are not binding

Word "Obiter" means " By the way"; "in passing"; "incidentally". *Obiter dictum* is the expression of opinion stated in the judgement by a judge on a question immaterial to the *ratio decidendi*. They are unnecessary for the decision of a particular case.

An *obiter dictum* is an observation which is either not necessary for the decision of the case or does not relate to the material facts in issue[see *K. Jayarama Iyer v. State of Hyderabad* AIR 1954 Hyd.56]

A case is a precedent and binding for what is explicitly decided and no more. It would be too much to imply and read into the propositions that may seem to flow even incidentally or logically from it.

[See *CIT v. K. Ramakrishnan* (1993) 202 ITR 997 (Ker.)]

It would be incorrect to say that every opinion of the Supreme Court would be binding on the High Courts in India. Only the opinion expressed on a question that arose for the determination of a case is binding.

[See *Mohandas Issardas v. Santhanam* (A.N.) AIR 1955 Bom 113]

9) Some suggestions for avoiding conflicting decisions

No doubt the doctrine of *stare decisis* or binding precedent has brought about some certainty and consistency in judicial decisions in India, still the inconsistent and conflicting decisions particularly in respect of the Income-tax Act between the different High Courts and the different benches of the same High Court or the Supreme Court has been the bane of the Indian Judicial system.

The problem could be mitigated to a great extent if the procedure followed in U.S.A. is adopted where the entire court sits to decide a question of law. But the problem in India is that while the cases go on mounting by the day, the Government dithers to fill even the normal vacancies in the courts. If the faith of the common man in the judiciary is to be maintained, at least the practical suggestions that the hon'ble courts themselves have given should be adhered to.

In *Union of India v. Raghubir Singh* (1989) 178 ITR 548, hon'ble Supreme Court suggested that for the purpose of imparting certainty and endowing due authority, decision of this court in future should be rendered by Division Benches of at least three judges unless, for compelling reasons, the matter cannot be referred to the full Court or a Constitution Bench.

Views of the *Allahabad High Court* in *CIT v. HariNath & Co.* (1987) 168 ITR 440 are also worth taking note of.

"Though it is queer, it is bound to happen in a federal union that a central statute, like the Income-tax Act, operates differently in various states on account of varying interpretations of the High Courts. This can be obviated only if the cases involving divergent views are decided out of turn by the Supreme Court. Serious thought is required to devise a method to achieve unanimity on the provisions of a central statute".

10) Review of Judicial Precedents

Doctrine of Judicial Precedents or *Stare decisis*, which imparts stability and security in the judicial system, has been recognized the world over. Highest /higher courts in a country not only interpret law or deliver justice but also make law in the sense that the *ratio decidendi* of their judgements has the binding force of the law. One question that plagued the judicial fraternity around the world is - Does the doctrine of *stare decisis* deter the court from overruling an earlier decision?

Though the answer to this is certainly a resounding no, the question has elicited some highly felicitous responses from the learned judges.

Lord Denning, one of the most revered judge of the last century observes in *Ostime v. Australian Mutual Provident Society* [1960] AC 459 (HL).

"The doctrine of precedent does not compel their Lordships to follow the wrong path until you fall over the edge of the cliff".

Justice Jackson dissenting from other judges in *Massachusetts v. United States* [1947]333 US 611 says " I see no reason why I should be consciously wrong today because I was unconsciously wrong yesterday".

Take this from the Indian Judiciary-

" To perpetuate an error is no heroism. To rectify it, is the compulsion of judicial conscience. A judge ought to be wise enough to know that he is fallible".

[Supreme Court in *Umed v. Raj Singh AIR 1975 SC 43*]

" A judge-made change in law rarely comes out of a blue sky. Rumbblings from Olympus in the form of *Obiter dicta* will give warning of unsettled weather. Unsettled weather is itself, of course, bound to cause uncertainty, but inevitably it precedes the acceptance of a change".

[Supreme Court in *Surrinder Singh v. Hardayal Singh AIR 1985 SC 89*]

11) Position in the U.K.

In the United Kingdom, Parliament is the supreme body and stands at the top of the constitutional structure of the country, The courts have no power to question the validity of an Act of Parliament. At the most, they can interpret the law framed by the parliament of the country. Till Lord Gardiner made the famous statement on behalf of the Lords of Appeal in *Ordinary (1966) 3All ER 77 (note)* bringing about a change in the judicial thinking, it was said that the House of Lords never overrule itself but only distinguishes its earlier decisions. Any erroneous decision of the House of Lords , then could be set right only by an Act of Parliament.

In the above referred case, their Lordships had observed -

"Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules. Their Lordship nevertheless recognize that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law. They propose, therefore, to modify their present practice and, while treating former decisions of this House as normally binding, to depart from previous decision when it appears right to do so".

Their Lordships however cautioned that in so doing, the danger of disturbing the basis on which contracts, settlements of property and fiscal arrangements etc. should be borne in mind.

Happy change brought about by this observation culminated into framing of guidelines on the basis of series of cases decided up to 1975 by the House of Lords. Dr, Alan Paterson summerised the guidelines in Law Lords(1982).

Summary of guidelines

- i) The freedom granted by the 1966 Practice statement ought to be exercised sparingly- **the use of sparingly criterion.**
- ii) A decision ought not to be overruled if to do so would upset the legitimate expectations of people who have entered into contracts or settlements or

otherwise regulated their affairs in the reliance of the validity of that decision- **the legitimate expectations criterion.**

- iii) A decision concerning questions of construction of statutes or other documents ought not to be overruled except in rare and exceptional cases- **the construction criterion.**
- iv) A decision ought not to be overruled if it would be impracticable for the Lords to foresee the consequences of departing from it- **the unforeseeable consequences criterion.**
- v) A decision ought not to be overruled if to do so would involve a change that ought to be a part of a comprehensive reform of the law. Such changes are best done by the legislature following wide survey of the whole field- **the need for comprehensive reform criterion.**
- vi) In the interest of certainty, a decision ought not to be overruled merely because the Law Lords consider that it was wrongly decided. There must be some additional reasons to justify such a step- **the precedent merely wrong criterion.**
- vii) The decision ought to be overruled if it causes such great uncertainty in practice that the parties, advisors are unable to give any clear indication as to what the courts will hold the law to be- **the rectification of uncertainty criterion.**
- viii) A decision ought to be overruled if, in relation to some broad issue or principle, it is not considered just or in keeping with contemporary social conditions or modern conceptions of public policy- **the unjust or outmoded criterion.**

Dr. Paterson tracking the decided cases between 1966, when the 1966 Practice Statement was declared, and 1988, found that out of 29 cases where the House of Lords were invited to overrule the precedents, they actually overruled in only 8 cases while in the remaining cases, they chose to distinguish the earlier decisions.

12) Australian Scenario

The High Court of Australia, the highest court in that country has the right to review its earlier judgements. In *Tramways case (1914) 18 CLR 54*, Chief Justice Griffith opined that there cannot be an abstract proposition that a court is legally or technically bound by its previous decision. The court is free to depart from its earlier decision if it was manifestly wrong for instance, where it was made on a mistaken assumption of the continuance of a repeated or expired statute, or it was contrary to a decision of another court which the court was bound to follow. But the court should not review its earlier decision upon a mere suggestion that it might arrive at a different conclusion if the matter was *res integra*. In other words it should not review a precedent as if it is judging the issue afresh. In the above referred case, Justice Barton observed-

" But the court can always listen to argument as to whether it ought to review a particular decision, and the strongest reason for an overruling is that a decision is manifestly wrong and its maintenance is injurious to public interest".

13) Situation in U. S. A.

The Supreme Court of USA has overruled its previous decisions on a number of occasions. In the *State of Washington v. Dawson and Co. (1924) 264 U.S.219,68 L.Ed.646*, Justice Brandeis observed-

The doctrine of *stare decisis* should not deter us from overruling that case and those which follow it. The decisions are recent ones. They have not been acquiesced in. They have not created a rule of property around which vested interests have clustered. They affect solely matters of transitory nature. On the other hand, they affect seriously the lives of men, women and children, and the general welfare. *Stare decisis* is ordinarily a wise rule of action. But it is not a universal, inexorable command. The instances in which the courts have disregarded its admonition are many.

Justice Brandeis observes in *David Burnel v. Coronado Oil and gas Co. (1931) 285 US 393; 76 L. Ed.815-*

" But in cases involving the Federal Constitution, where correction through legislative action is practically impossible, this court has often overruled its earlier decisions. The court bows to the lessons of experience and the force of better reasoning recognising that the process of trial and error, so fruitful in the physical sciences, is appropriate also in the judicial function."

The judicial committee of the Privy Council also took the view that it was not bound in law by its earlier decisions.

14) Position in India

The question of review of its earlier decision came up for consideration before the hon'ble Supreme Court perhaps for the first time in *Bengal Immunity Co. Ltd. v. State of Bihar AIR 1955 SC 661*. Majority of Judges (simple majority of 4:3) in the Bench of seven judges overruled the majority decision (overwhelming majority of 4:1) of the Constitution Bench of five judges in *State of Bombay v. United Motors (India) Ltd. (1953) SCR 1069* after considering the position obtaining in the countries discussed in the preceding paragraphs and after analysing some of the cases delivered by the highest courts of those countries. Hon'ble acting Chief Justice Sri Das delivering the judgement on behalf of the majority opined that the Constitution does not debar them from departing from a previous decision if they are convinced of its error and its baneful effect on the general interests of the public. Rejecting the plea of invoking the doctrine of *stare decisis*, he stated that the doctrine of *stare decisis* was not an inflexible rule and must yield in those cases where following it would result in perpetuating an error to the detriment of the general welfare of the public. In respect of the decision in question, he observed-

" If the decision is erroneous, as indeed we conceive it to be, we owe it to the public to protect them against the illegal tax burdens which the states are seeking to impose on the strength of that erroneous recent decision."

Hon'ble judge also cautioned that the court should not differ merely because a contrary view appeared preferable and that a court should not lightly dissent from its previous pronouncement.

The issue of review and revision of some earlier decisions of the Supreme Court again cropped up before the same court in ***Keshav Mills Co. Ltd. v. CIT (1965) 56 ITR 365***, where the hon'ble court once again dealt with this issue elaborately. The Apex Court, in this case, also advanced the proposition that the courts should be cautious in overruling an unanimous decision or a decision with overwhelming majority. In this light it analysed the Bengal Immunity Company's case (Supra) and came to the conclusion that this court in this case reversed its earlier majority decision (4:1) in United Motor's case (Supra) by a simple majority of 4:3 because the majority of judges in United Motor's case were persuaded to take the view that there were several circumstances which made it necessary to adopt that course.

In Keshav Mill's case, the court analysed the different considerations that apply when the court sits in appeal against the decisions of the High courts and when its own previous decision is under review and revision. When the SC hears appeals against the decisions of the High courts, it would be open to it to hold that though the view taken by the HC is reasonably possible, the alternative view that is also reasonably possible is better and should be preferred.

However, when the view already taken by the court is asked to be reviewed and revised, it may not necessarily be an adequate reason for such review to hold that though the earlier view is a reasonably possible view, the alternative view which is pressed on the subsequent occasion is more reasonable. Earlier decision should not be revised unless it is in the interest of the public good to do so or there are other valid and compulsive reasons. As the decisions of the Supreme Court are binding under article 141 on all courts within the territory of India, it must be the constant endeavor and concern of this court to introduce and maintain an element of certainty and continuing in the interpretation of law in the country.

The court opined that though it would be inexpedient to lay down general principles, several relevant considerations should be taken note of while dealing with question of reviewing and revising its earlier decisions viz.,

- What is the nature of the infirmity or error on which a plea for a review is based?
- Whether some patent aspects of the question remain unnoticed or whether the attention of the court not drawn to any relevant and material statutory provision or to any previous decision of the court having a bearing on the point.
- Whether the court hearing such plea is fairly unanimous that there is such an error in the earlier view?
- What would be the impact of the error on the general administration of law or on public good?
- Whether the earlier decision has been followed on subsequent occasions either by the SC or by the HC's?
- Whether the reversal of the earlier decision lead to public inconvenience, hardship or mischief.

In ***Ganga Sugar Corporation Ltd. v. State of U.P.(1980) 1 SCR 769, 782: AIR 1980 SC 286, 294***, the Constitution Bench of the Supreme Court made the felicitous observation that a precedent should be reviewed only where the subject was of such fundamental importance to national life or the reasoning is so plainly erroneous in the light of later thought that *it is wiser to be ultimately right rather than to be consistently wrong*. [Emphasis supplied]
